

Part 127—Certification and Operations of Scheduled Air Carriers with Helicopters

This change incorporates two Special Federal Aviation Regulations (SFAR):

SFAR 38-10, Public Aircraft Definition and Exemption Authority, adopted January 6, 1995, which revises Section 1(a) introductory text of SFAR 38-2.

SFAR 38-11, Certification and Operating Requirements, adopted May 31, 1995, which extends the termination date of SFAR 38-2 to June 1, 1996.

Page Control Chart

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Suggest filing this transmittal at the beginning of the FAR. It will provide a method for determining that all changes have been received as listed in the current edition of AC 00-44, Status of Federal Aviation Regulations, and a check for determining if the FAR contains the proper pages.

considered public aircraft will be subject to FAA safety regulations on the effective date of those amendments. For example, when the change in the definition enacted by the 1994 Amendment becomes effective, government-owned aircraft used to transport passengers will, except in limited circumstances, no longer be considered public aircraft. Therefore, the operators of such aircraft will have to meet civil aircraft requirements, including those for certification, maintenance, and training, unless they qualify for narrowly defined exemptions. Aircraft operated by the Armed Forces and intelligence agencies, however, will retain their public aircraft status unless operated for a commercial purpose.

Although the 1994 Amendment gives the FAA Administrator certain authority to grant exemptions to "units of government" from the statutory requirements applicable to civil aircraft, the agency expects to invoke that exemption authority only when the public interest clearly demands it. To obtain an exemption under the statute, a unit of government must show that granting the exemption is necessary "to prevent an undue economic burden on the unit of government," and that the aviation safety program of the unit of government is "effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government." In acting on any exemption request the FAA will assess the safety of the operation in question. The FAA is developing guidance in the form of an advisory circular for use in this process. It should be noted that, it is unlikely that the FAA will be able to grant exemptions from type certification and airworthiness requirements for aircraft that have no history of civil certification.

In a notice published in the *Federal Register* on August 1, 1994, (59 FR 39192) the FAA invited comment on the question whether intergovernmental reimbursement for the use of government-owned aircraft prevents the aircraft involved from meeting the definition of public aircraft and, therefore, requires compliance with all safety regulations applicable to civil aircraft. That issue has been clarified by the 1994 Amendment, and the FAA will not be taking further action on that Notice.

As to whether public aircraft status is lost when one government reimburses another for the use of its aircraft, under the 1994 Amendment, if there is cost reimbursement, the aircraft will be civil aircraft unless the appropriate unit of government certifies "that the operation was necessary to respond to a significant and imminent threat to life or property," and "that no service by a private operator was reasonably available to meet the threat."

To implement both the 1987 and 1994 Amendments, this rule amends the definition of "public aircraft" in 14 CFR part 1. This rule also amends 14 CFR part 11 to reflect the Administrator's new statutory exemption authority concerning government-owned aircraft. While the Administrator's exemption authority in the past has been limited to exemptions from rules rather than from statutes, in this case Congress granted the Administrator the authority to grant exemptions from the statute—specifically, "from any requirement of part A of subtitle VII of title 49, United States Code." Pub. L. 103-411. As a result, this rule modifies Section 11.25(b)(3) to include exemptions, for government-owned aircraft only, from statutes as well as from rules.

One final conforming change to the regulations is in the applicability section of SFAR No. 38-2, entitled "Certification and Operating Requirements." In its present form, the applicability section provides that: "This Special Federal Aviation Regulation applies to persons conducting commercial passenger operations, cargo operations, or both . . ." This rule adds the words "operating civil aircraft in" to the applicability statement. The new law permits some public aircraft operations for which compensation is received. This change is necessary to assure

for good cause finds that notice and public procedure thereon are unnecessary within the meaning of 5 U.S.C. 553(b)(B) of the Administrative Procedure Act. Individuals will have an opportunity to submit comments concerning this final rule by February 24, 1995.

Economic and Other Analyses

This amendment merely conforms FAA rules to the 1987 and 1994 Amendments to the law. Federal regulations must conform to the law, therefore the FAA has no discretionary power in this matter. Consequently, a Regulatory Evaluation of the costs and benefits of this change would serve no useful purpose and none was prepared. While meeting these new requirements may result in costs to units of government, including the FAA, these costs are a result of the law and not the regulation. The law does give the FAA Administrator discretionary authority to grant exemptions from certain statutory requirements when the existing safety program of the unit of government is effective to ensure safe operations and conformance with federal regulations pertaining to civil aircraft would constitute "an undue economic burden" as previously discussed. Economic considerations will be evaluated by the FAA on a case-by-case basis at the time exemptions are requested.

For the same reason explained above, the other analyses and determinations normally made a part of rulemaking procedures are determined to be unnecessary in this case and are not included in this document: an analysis of whether there is a significant economic impact on a substantial number of small entities, an international trade impact assessment, a federalism assessment.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Conclusion

For the reasons discussed in the preamble the FAA has determined that this final rule is not significant under Executive Order 12866 or DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

The Amendment

Accordingly, 14 CFR parts 1, 11, 121, 125, 127, 129 and 135 are amended effective April 23, 1995.

The authority citation for part 127 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44705, 44710–44711, and 44713.

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38-2 [50 FR 23941; June 7, 1985], which contains the certification and operating requirements for persons transporting passengers or cargo for compensation or hire. The current termination date for SFAR 38-2 is June 1, 1995. Because the FAA has not completed a rulemaking process to consolidate and codify the certification and operations specifications requirements, an extension of the termination date is necessary. If this rulemaking process is completed before the new termination date of June 1, 1996, the FAA intends to rescind SFAR 38-2 as part of that rulemaking.

DATES: Effective date June 1, 1995. Comments must be received on or before August 1, 1995.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 18510, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rule Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Davis, Project Development Branch (AFS-240), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95-504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979-1984. By January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 [43 FR 58366; December 14, 1978] set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address Part 133—External Load Operations, Part 137—Agriculture Aircraft Operations, or Part 91—Training and Other Special Purpose Operations.)

tailored, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (e.g., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an operator's particular operation.

Since that time, the FAA has proposed rulemaking to codify the certification and operations specifications requirements currently found in SFAR 38-2 into a new part 119 [Notice No. 88-16] [53 FR 39852; October 12, 1988].

On April 11, 1990, the FAA reopened the comment period for Notice No. 88-16 [55 FR 14404; April 17, 1990] for comments on the definition of "scheduled operation" and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990. Based on the complexity of comments received, the FAA subsequently published an SNPRM on June 8, 1993 [58 FR 32248]; the comment period closed July 23, 1993.

Recently the FAA issued a notice proposing that many part 121 requirements should be imposed on certain part 135 operators [60 FR 16230; March 29, 1995]. If that proposal is adopted, the rules specifying the applicability of parts 121, 125, and 135 would be codified in a new part 119. In that same NPRM, the FAA proposed to rescind SFAR 38-2 if a final rule affecting commuter operators and establishing a new part 119 is issued. However, in the meantime, SFAR 38-2 contains the current requirements for certification and operations specifications. Thus, the FAA finds it necessary to extend the SFAR until June 1, 1996.

Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1996. If the FAA publishes a final rule adopting a new part 119 into the Federal Aviation Regulations before the termination date, that rulemaking will rescind SFAR 38-2. This action is necessary to permit continued operations under SFAR 38-2 and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the rules docket for examination by interested parties.

International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

Paperwork Reduction Act

Information collection requirements in this SFAR have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0008.

Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that this action is not significant under Executive Order 12866; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

Adoption of the Amendment

In consideration of the foregoing SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective June 1, 1995.

The authority citation for part 127 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44705, 44710-44711, and 44713.

extended the expiration date of SFAR 38-2 to June 1, 1990, in order for the FAA to consider comments on Notice No. 88-16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38-2, part 121, and part 135.

On April 11, 1990, the FAA reopened the comment period for Notice No. 88-16 [55 FR 14404; April 17, 1990] for comments on the definition of "scheduled operation" and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990.

To allow for additional time to consider comments received during the reopened comment period, the FAA extended the expiration date for SFAR 38-2 until June 1, 1991 [55 FR 23046; June 5, 1990]. Because of the complexity of the comments, the expiration date for SFAR 38-2 was extended until June 1, 1992 [56 FR 25450; June 4, 1991], and subsequently again extended until June 1, 1993 [57 FR 23922; June 4, 1992].

Based on comments received, the FAA has determined that a different definition of "scheduled operation" should be proposed for public comment. That supplemental notice was published June 8, 1993 [58 FR 32248]; the comment period closes July 23, 1993. However, to allow time to consider comments and issue a final rule, the FAA has determined that it is necessary to extend the expiration date for SFAR 38-2 until June 1, 1995.

Good Cause Justification For Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1995. If the FAA publishes a final rule incorporating SFAR 38-2 into the FAR before the termination date, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38-2 was first issued. Therefore, I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

Adoption of the Amendment

In consideration of the foregoing SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended effective June 18, 1993.

The authority citation for part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Special Federal Aviation Regulation 38-10

Public Aircraft Definition and Exemption Authority

Adopted: January 6, 1995

Effective: April 23, 1995

(Published in 60 FR 5074, January 25, 1995)

SUMMARY: This rule amends the Federal Aviation Regulations to reflect statutory changes in the definition of public aircraft and the FAA Administrator's new authority to grant exemptions from statutory requirements, under certain conditions, to units of Federal, state, and local government for operations of government-owned aircraft. This rule is necessary to implement the Airport and Airway Improvement Act Amendments of 1987 and Independent Safety Board Act Amendments of 1994.

DATES: This final rule is effective April 23, 1995. Comments must be submitted on or before February 24, 1995.

ADDRESSES: Send comments in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-200), Docket No. 28060, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David Catey, (AFS-220), (202) 267-8094, 800 Independence Avenue SW., Washington, DC 20591.

- (a)(1) Certificates.
- (a)(2) Certification requirements.
- (a)(3) Operating requirements.
- (b) Operations conducted under more than one paragraph.
- (c) Prohibition against operating without certificate or in violation of operations specifications.

2. Certificates and foreign air carrier operations specifications.

- (a) Air Carrier Operating Certificate.
- (b) Operating Certificate.
- (c) Foreign air carrier operations specifications.

3. Operations specifications.

4. Air carriers and those commercial operators engaged in scheduled intrastate common carriage.

- (a)(1) Airplanes, more than 30 seats/7,500 pounds payload, scheduled within 48 States.
- (a)(2) Airplanes, more than 30 seats/7,500 pounds payload, scheduled outside 48 States.
- (a)(3) Airplanes, more than 30 seats/7,500 pounds payload, not scheduled and all cargo.
- (b) Airplanes, 30 seats or less/7,500 or less pounds payload.
- (c) Rotorcraft, 30 seats or less/7,500 pounds or less payload.
- (d) Rotorcraft, more than 30 seats/more than 7,500 pounds payload.

5. Operations conducted by a person who is not engaged in air carrier operations, but is engaged in passenger operations, cargo operations, or both, as a commercial operator.

- (a) Airplanes, 20 or more seats/6,000 or more pounds payload.
- (b) Airplanes, less than 20 seats/less than 6,000 pounds payload.
- (c) Rotorcraft, 30 seats or less/7,500 pounds or less payload.
- (d) Rotorcraft, more than 30 seats/more than 7,500 pounds payload.

6. Definitions.

- (a) Terms in FAR.
 - (1) Domestic/flag/supplemental/commuter.
 - (2) ATCO.
- (b) FAR references to:
 - (1) Domestic air carriers.

- (3) Foreign air carrier.
- (4) Scheduled operations.
- (5) Size of aircraft.
- (6) Maximum payload capacity.
- (7) Empty weight.
- (8) Maximum zero fuel weight.
- (9) Justifiable aircraft equipment.

(1) The types of operating certificates issued by the Federal Aviation Administration;

(2) The certification requirements an operator must meet in order to obtain and hold operations specifications for each type of operation conducted and each class and size of aircraft operated; and

(3) The operating requirements an operator must meet in conducting each type of operation and in operating each class and size of aircraft authorized in its operations specifications.

A person shall be issued only one certificate and all operations shall be conducted under that certificate, regardless of the type of operation or the class or size of aircraft operated. A person holding an air carrier operating certificate may not conduct any operations under the rules of part 125.

(b) Persons conducting operations under more than one paragraph of this SFAR shall meet the certification requirements specified in each paragraph and shall conduct operations in compliance with the requirements of the Federal Aviation Regulations specified in each paragraph for the operation conducted under that paragraph.

(c) Except as provided under this SFAR, no person may operate as an air carrier or as a commercial operator without, or in violation of, a certificate and operations specifications issued under this SFAR.

2. Certificates and foreign air carrier operations specifications.

(a) Persons authorized to conduct operations as an air carrier will be issued an Air Carrier Operating Certificate.

(b) Persons who are not authorized to conduct air carrier operations, but who are authorized to conduct passenger, cargo, or both, operations as a commercial operator will be issued an Operating Certificate.

(c) FAA certificates are not issued to foreign air carriers. Persons authorized to conduct operations in the United States as a foreign air carrier who hold a permit issued under Section 402 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1372), or other appropriate economic or exemption authority issued by the appropriate agency of the United States of America will be issued operations specifications in accordance with the requirements of part 129 and shall conduct their operations within the United States in accordance with those requirements.

3. Operations specifications.

The operations specifications associated with a certificate issued under paragraph 2(a) or (b) and the operations specifications issued under paragraph 2(c) of this SFAR will prescribe the authorizations, limitations and certain procedures under which each type of operation shall be conducted and each class and size of aircraft shall be operated.

4. Air carriers, and those commercial operators engaged in scheduled intrastate common carriage.

Each person who conducts operations as an air carrier or as a commercial operator engaged in scheduled intrastate common carriage of persons or property for compensation or hire in air commerce with—

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[(SFAR 38-10, Eff. 4/23/95)]

(2) Scheduled operations to points outside the 48 contiguous states of the United States and the District of Columbia with those airplanes in accordance with the requirements of part 121 applicable to flag air carriers, and shall be issued operations specifications for those operations in accordance with those requirements.

(3) All-cargo operations and operations that are not scheduled with those airplanes in accordance with the requirements of part 121 applicable to supplemental air carriers, and shall be issued operations specifications for those operations in accordance with those requirements; except the Administrator may authorize those operations to be conducted under paragraph (4)(a)(1) or (2) of this paragraph.

(b) Airplanes having a maximum passenger seating configuration of 30 seats or less, excluding any required crewmember seat, and a maximum payload capacity of 7,500 pounds or less, shall comply with the certification requirements in part 135, and conduct its operations with those airplanes in accordance with the requirements of part 135, and shall be issued operations specifications for those operations in accordance with those requirements; except that the Administrator may authorize a person conducting operations in transport category airplanes to conduct those operations in accordance with the requirements of paragraph 4(a) of this paragraph.

(c) Rotorcraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less shall comply with the certification requirements in part 135, and conduct its operations with those aircraft in accordance with the requirements of part 135, and shall be issued operations specifications for those operations in accordance with those requirements.

(d) Rotorcraft having a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds shall comply with the certification requirements in part 135, and conduct its operations with those aircraft in accordance with the requirements of part 135, and shall be issued special operations specifications for those operations in accordance with those requirements and this SFAR.

5. Operations conducted by a person who is not engaged in air carrier operations, but is engaged in passenger operations, cargo operations, or both, as a commercial operator.

Each person, other than a person conducting operations under paragraph 2(c) or 4 of this SFAR, who conducts operations with—

(a) Airplanes having a passenger seating configuration of 20 or more, excluding any required crewmember seat, or a maximum payload capacity of 6,000 pounds or more, shall comply with the certification requirements in part 125, and conduct its operations with those airplanes in accordance with the requirements of part 125, and shall be issued operations specifications in accordance with those requirements, or shall comply with an appropriate deviation authority.

(b) Airplanes having a maximum passenger seating configuration of less than 20 seats, excluding any required crewmember seat, and a maximum payload capacity of less than 6,000 pounds shall comply with the certification requirements in part 135, and conduct its operations in those airplanes in accordance with the requirements of part 135, and shall be issued operations specifications in accordance with those requirements.

(c) Rotorcraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less shall comply with the certification require-

6. Definitions.

(a) Wherever in the Federal Aviation Regulations the terms—

(1) “Domestic air carrier operating certificate,” “flag air carrier operating certificate,” “supplemental air carrier operating certificate,” or “commuter air carrier (in the context of Air Carrier Operating Certificate) appears, it shall be deemed to mean an “Air Carrier Operating Certificate” issued and maintained under this SFAR.

(2) “ATCO operating certificate” appears, it shall be deemed to mean either an “Air Carrier Operating Certificate” or “Operating Certificate,” as is appropriate to the context of the regulation. All other references to an operating certificate shall be deemed to mean an “Operating Certificate” issued under this SFAR unless the context indicates the reference is to an Air Carrier Operating Certificate.

(b) Wherever in the Federal Aviation Regulations a regulation applies to—

(1) “Domestic air carriers,” it will be deemed to mean a regulation that applies to scheduled operations solely within the 48 contiguous states of the United States and the District of Columbia conducted by persons described in paragraph 4(a)(1) of this SFAR.

(2) “Flag air carriers,” it will be deemed to mean a regulation that applies to scheduled operations to any point outside the 48 contiguous states of the United States and the District of Columbia conducted by persons described in paragraph 4(a)(2) of this SFAR.

(3) “Supplemental air carriers,” it will be deemed to mean a regulation that applies to charter and all-cargo operations conducted by persons described in paragraph 4(a)(3) of this SFAR.

(4) “Commuter air carriers,” it will be deemed to mean a regulation that applies to scheduled passenger carrying operations, with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules, conducted by persons described in paragraph 4(b) or (c) of this SFAR. This definition does not apply to part 93 of this chapter.

(c) For the purpose of this SFAR, the term—

(1) “Air carrier” means a person who meets the definition of an air carrier as defined in the Federal Aviation Act of 1958, as amended.

(2) “Commercial operator” means a person, other than an air carrier, who conducts operations in air commerce carrying persons or property for compensation or hire.

(3) “Foreign air carrier” means any person other than a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(4) “Scheduled operations” means operations that are conducted in accordance with a published schedule for passenger operations which includes dates or times (or both) that is openly advertised or otherwise made readily available to the general public.

(5) “Size of aircraft” means an aircraft’s size as determined by its seating configuration or payload capacity, or both.

(6) “Maximum payload capacity” means:

and fuel is as follows:

(A) Crew—200 pounds for each crewmember required by the Federal Aviation Regulations.

(B) Oil—350 pounds.

(C) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

(7) “Empty weight” means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

(8) “Maximum zero fuel weight” means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, or the approved Aircraft Flight Manual, or both.

(9) “Justifiable aircraft equipment” means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity.

This Special Federal Aviation Regulation No. 38-2 terminates [June 1, 1996], or the effective date of the codification of SFAR 38-2 into the Federal Aviation Regulations, whichever occurs first.
